

REPUBLIC OF NAMIBIA



IN THE HIGH COURT OF NAMIBIA, MAIN DIVISION, WINDHOEK
REVIEW JUDGMENT
PRACTICE DIRECTIVE 61

Case Title: The State v Iiyatulwa Tuhafeni and 3 others	Case No: CR 106/2023
High Court MD Review No: 1602/2023	Division of Court: High Court, Main Division
Coram: Liebenberg J <i>et</i> Shivute J	Delivered: 16 October 2023
Neutral citation: <i>S v Tuhafeni</i> (CR 106/2023) [2023] NAHCMD 653 (16 October 2023)	
ORDER: The convictions and sentences in respect of all accused are set aside.	
REASONS: LIEBENBERG J (SHIVUTE J concurring): [1] This is a review matter from the Magistrate's Court for the District of Windhoek. The accused persons were charged with contravening s 7, read with s 1, 8, and 10 of the	

Immigration Control Act 7 of 1993, in that the accused failed to present themselves to an immigration officer upon entry into Namibia.

[2] All the accused persons pleaded guilty and upon conviction, each was sentenced to N\$2000 (Two Thousand Namibia dollars) or 4 months' imprisonment.

[3] Seeing that the accused entered Namibia at Oshikango Border Post but charged, convicted and sentenced before a magistrate in the district of Windhoek, a query was directed whether or not the court *a quo* had jurisdiction to hear the matter.

[4] In response, the magistrate concedes that s 34(3) read with 34(1) of the Act should have been the preferred charge. Furthermore, she attributes the appearance of the accused persons before her to the fact that they were apprehended at Monte Christo, which is in her magisterial district.

[5] It is this court's view that the magistrate rightly conceded that the aforementioned failure constitutes an irregularity which vitiates the convictions imposed on the accused persons¹. The convictions therefore, fall to be set aside.

[6] It has been established that the accused persons, respectively, have since, paid the fines imposed and alternatively, their sentences.

[7] In the result, the court orders that:

1. The convictions and sentences in respect of all accused are set aside.
2. The fines paid are to be refunded to the depositors.

¹ *S v Mutandwa* (CR 04/2015) [2015] NAHCMD 13 (05 February 2015).

J C LIEBENBERG JUDGE	N N SHIVUTE JUDGE